

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Amendment of Sections
90.631(g) and (h) of the
Commission's Rules and
Regulations Concerning Wide
Area Specialized Mobile
Radio and Business Radio
Systems

RM-8029

To: The Commission

**STATEMENT OF THE
UTILITIES TELECOMMUNICATIONS COUNCIL
IN OPPOSITION TO PETITION FOR RULE MAKING**

Pursuant to Section 1.405 of the Commission's rules,
the Utilities Telecommunications Council (UTC) submits the
following statement in opposition to the Petition for Rule
Making in the above-captioned matter, filed on March 13,
1992, by the National Association of Business and
Educational Radio (NABER).^{1/}

Introduction

UTC is the national representative on communications
matters for the nation's electric, gas, and water
utilities. Approximately 2,000 utilities are members of
UTC, ranging in size from large combination electric-gas-
water utilities serving millions of consumers to small

^{1/} The subject Petition for Rule Making was placed on
Public Notice on July 13, 1992.

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rural electric cooperatives and water districts serving only a few thousand consumers. All utilities depend on reliable communications facilities to carry out their public service obligations, and most operate private land mobile facilities. UTC is therefore interested in any proceedings that would affect the efficient licensing and use of private land mobile radio spectrum.

Discussion

NABER has proposed that the "wide area" rules (Sections 90.631(g) and(h)) be amended to permit Specialized Mobile Radio (SMR) operators to construct wide-area 800 or 900 MHz systems using the same frequencies (providing there is no violation of the "40 mile rule"), and to permit Business Radio licensees to operate wide-area systems with all remote or satellite stations operating on a "primary" basis.^{2/} NABER argues that this rule change is necessary because SMR licensees and Business Radio licensees are effectively precluded from re-using the same frequencies within 70 miles of a licensed primary transmitter site, unless the initial system is fully loaded.^{3/} According to NABER, these licensees may install

^{2/} NABER "Petition for Rule Making", RM-8029, at pp. 4-5.

^{3/} RM-8029, at p.2

additional systems between 41 and 69 miles of their existing systems only if: (1) they license these "remote" stations on different frequencies, or (2) they are willing to accept secondary status for any such "remote" stations operating on the same frequencies.

Although NABER's proposal is limited to the unique factual situation of a Business Radio or SMR licensee installing additional facilities within 70 miles of its primary transmitter site, the rule changes requested by NABER would go far beyond what is reasonably necessary to accommodate these licensees. In fact, NABER's proposed rule changes could lead to less efficient use of the spectrum. UTC agrees with NABER's observation that today's mobile radio environment in the major urban areas is characterized by "too many users crowding too few channels."^{4/} However, such crowding will not be eliminated by permitting Business Radio and SMR licensees to maintain and expand radio systems without regard to loading.

The Commission adopted the wide-area licensing rules in its Second Report and Order in PR Docket No. 79-191, et al., 90 FCC 2d 1281 (1982). At that time, the Commission

^{4/} RM-8029, at p. 3.

determined that it would license wide-area systems only to non-SMR eligibles, and that "remote" stations in wide-area systems would be licensed only on a secondary basis to co-channel trunked systems. 90 FCC 2d at 1323.

On reconsideration, the Commission concluded that the remote stations of limited categories of licensees should be licensed on a primary basis. The Commission specifically declined, however, to accord primary licensing status to remote stations in wide-area systems licensed in other categories:

...With regard to the subject of wide area systems for public safety and public utility licensees, we conclude there is merit to allowing satellite stations to have primary status. We do not reach this conclusion easily, however, because in some respects it will diminish our ability to maximize the number of licensees who can use this spectrum. On the other hand, we must assure that communications systems which promote public safety can be implemented in ways which, in fact, permit them to be useful and serve the entire population for which they have responsibility. ...

Memorandum Opinion and Order in PR Docket No. 79-191, et al., 95 FCC 2d 477 (1983).

NABER has not explained how the authorization of wide-area SMR systems would improve spectrum efficiency. To the contrary, NABER indicates that SMR licensees have not, to-date, developed wide-area systems because they do not have

enough loading.^{5/} Other than co-channel frequency coordination requirements, there would be no limit on how far an SMR licensee would be permitted to "re-use" a channel or group of channels. Theoretically, an SMR applicant could license a nationwide wide-area system consisting of thousands of base station sites premised on nothing more than "re-use" of frequencies and loading of 70 mobiles per channel over the entire system.

Unlike non-commercial spectrum users, such as public safety or public utility licensees, which have well-defined service territories and which develop radio systems to cover only those geographic areas, SMR applicants are guided principally by a profit-motive when designing their radio systems. With the increasing scarcity of land mobile spectrum, the Commission is likely to be inundated with requests by SMR applicants to develop "wide area" systems if they could be assured of securing channels premised only on a showing that they could load to 70 mobiles per channel regardless of the geographic size of the system.^{6/} The current Rules on "wide-area" systems strike the proper

^{5/} RM-8029, at p. 3.

^{6/} Although the channel "take-back" rules will expire for systems initially licensed after June 1, 1993, projected loading will still be a criterion for the initial assignment of channels, as well as the expansion of existing systems.

balance between the need to ensure that spectrum is put to full and productive use, while accommodating the recognized needs of non-commercial spectrum users. UTC therefore opposes the modification of 90.631 to authorize wide-area SMR systems.

As noted above, the Commission authorizes remote stations in most wide-area systems as "secondary" in order to maximize the number of licensees who can use the spectrum, and to thereby promote spectrum efficiency. Affording primary status to the satellite stations of wide-area Business Radio or SMR systems would eviscerate the wide-area Rule. NABER's petition makes passing reference to "new digital equipment" and implementation of "frequency reuse to increase system capacity." However, NABER has not provided any information to show how frequency reuse would increase system capacity.

More importantly, NABER has not shown that the Business Radio or SMR licensees who are expected to benefit from these rule changes actually need this "increased capacity." To the contrary, NABER argues that the Rules should be amended because the intended beneficiaries of these rule changes cannot meet loading requirements.^{2/} If

^{2/} RM-8029, p. 3.

these licensees cannot meet the current loading requirements, it makes little sense to permit these licensees to expand their underutilized systems into even larger geographic areas, thereby foreclosing use of these channels by other potential licensees.

Conclusion

The relief requested by NABER goes far beyond what reasonably would be required to permit Business Radio or SMR licensees to reuse frequencies within 70 miles of an existing transmitter site. In any event, Business Radio licensees without sufficient loading to justify additional channels are already permitted to establish wide-area systems. Although remote sites in wide-area Business Radio systems are licensed on a secondary basis, this is done in recognition of the fact that the frequencies could be licensed to another user having greater need for the channels. Finally, licensing of wide-area SMR systems will only lead to widespread warehousing of spectrum, or, at a minimum, inefficient spectrum use.

WHEREFORE, THE PREMISES CONSIDERED, the Utilities
Telecommunications Council respectfully urges the
Commission to deny the subject Petition for Rule Making.

Respectfully submitted,

UTILITIES TELECOMMUNICATIONS
COUNCIL

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Dated: August 12, 1992

CERTIFICATE OF SERVICE

I, Kim Winborne, hereby certify that I have caused to be sent, by first class mail, postage prepaid, this 12th day of August, 1992, a copy of the foregoing "Statement of the Utilities Telecommunications Council in Opposition to Petition for Rule Making," to the following:

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